

LANDSCAPE MAINTENANCE AGREEMENT

ARIZONA PROJECT 1-10-3(107)

(48th St. to Baseline Rd.)

THIS AGREEMENT, made this 18th day of May, 1976, pursuant to A.R.S. Sec. 11-951 through Sec. 11-954, by and between the Department of Transportation, Highways Division, an agency of the State of Arizona, thereunto duly authorized, hereinafter designated Department of Transportation and the City of Tempe, a municipal corporation, thereunto duly authorized, hereinafter designated as City of Tempe.

WITNESSETH:

WHEREAS, it is to the mutual advantage of the Department of Transportation and the City of Tempe to landscape the Maricopa Freeway from 48th Street to Baseline Road and Broadway Road from 48th Street to Priest Road in the City of Tempe, a distance of approximately 2.84 miles.

NOW, THEREFORE, it is hereby mutually agreed by and between the Department of Transportation and the City of Tempe, pursuant to the authority contained in A.R.S. Sec. 28-106-B-(18), as follows:

1. The Department of Transportation will prepare plans for the landscaping and irrigation project and submit them to the Federal Highway Administration for approval.
2. Upon approval, the project will be constructed by the Department of Transportation using federal funds apportioned to the State of Arizona.
3. The City of Tempe shall furnish and install water meters, and the cost of which shall be paid by the Department of Transportation.
4. The City of Tempe shall furnish all water during construction phase, and all water hereafter necessary to properly maintain the landscaping between the right of way lines, all at city expense.
5. The Department of Transportation shall maintain the landscaping and irrigation system, including plant replacement and irrigation systems repairs as needed.

6. The City of Tempe hereby agrees to save and hold harmless the Department of Transportation, or any of its departments, agencies, officers or employees from all cost and damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or non-performance of any provision of this agreement by the City of Tempe, any of its agents, or any of its independent contractors. The above cost incurred by the Department of Transportation or any of its departments, agencies or employees shall include in the event of an action, court costs, expenses of litigation and reasonable attorneys' fees. When any above cost, damage or other damage occurs as aforesaid, the City of Tempe assumes the burden of proof that the activity, condition, or event did not cause such cost, damage or other damage.

7. This agreement will remain in effect until such time that the State relinquishes ownership of the right of way or discontinues the landscaped areas.

8. This agreement shall be filed with the Secretary of State and shall not become effective until ten days after the date of such filing.

9. Authenticated copies of the resolution of the Department of Transportation and the City of Tempe authorizing both entities to enter into such agreement are attached.

IN WITNESS WHEREOF the parties have executed two copies of this agreement on the day and year herein written.

ARIZONA DEPARTMENT OF
TRANSPORTATION

CITY OF TEMPE

BY

Dean L. ...

William J. ...

STATE OF ARIZONA)
 : SS
County of Maricopa)

I, Virginia S. Thompson, City Clerk

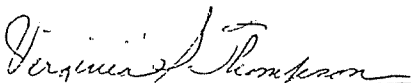
of the City of Tempe, Arizona, do hereby certify that the following is
a true and correct extract of the minutes of the City Council meeting
held April 29, 1976:

5C (3) Landscape Maintenance Agreement with Arizona Department
of Transportation

Mr. Serenbezt spoke to this proposed agreement, and responded
to questions of the Council.

Vice-Mayor Dwight moved that the Mayor be authorized to execute
the landscaping maintenance agreement, Arizona Porject I-10-3 (107)
with the Arizona Department of Transportation; Councilman Mitchell
seconded; roll call vote 7-0.

In Witness Whereof, I have hereunto set my hand and affixed
the Official Seal of the City of Tempe, Arizona. Done in Tempe,
Arizona, this 29th day of April, 1976.



Virginia S. Thompson, CMC
City Clerk

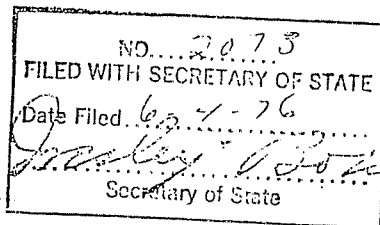
APPROVAL OF THE ATTORNEY GENERAL

I hereby state that I have reviewed the proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION, STATE ENGINEER and the CITY OF TEMPE, and declare the agreement to be in proper form and within the powers and authority granted under the laws of the State of Arizona.

DATED this 2nd day of April, 1976.

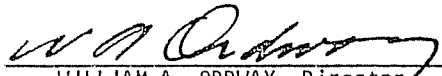
BRUCE E. BABBITT
The Attorney General

Albert Morgan
Assistant Attorney General



R E S O L U T I O N

Be it resolved on this date, May 17, 1976, I,
WILLIAM A. ORDWAY, the below undersigned Director, Department of Transportation,
have determined that it is to be to the advantage of the State of Arizona that
the Department of Transportation, acting by and through the Highways Division,
and the CITY of TEMPE, acting
by and through its CITY COUNCIL,
enter into the intergovernmental agency agreement for the purpose of entering
in a landscape maintenance agreement for certain projects which have been
selected by the State and subject to the approval of the Federal Highway
Administration, as by law required; and request the City to perform certain
work and supply necessary materials required to maintain the specified areas
in the manner specified in the attached agreement.


WILLIAM A. ORDWAY, Director
Department of Transportation